

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 RITA M. LANE
Deputy Attorney General
4 State Bar No. 171352
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
6 P.O. Box 85266
San Diego, CA 92186-5266
7 Telephone: (619) 645-2614
Facsimile: (619) 645-2061
8 *Attorneys for Complainant*

9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **JULIA DENISE McILRATH**
6535 Corintia Street
14 Carlsbad, CA 92009

15 **Registered Nurse License No. 676264**

16 Respondent.

Case No. *2010-25*

A C C U S A T I O N

17
18 Complainant alleges:

19 **PARTIES**

20 1. Heidi J. Goodman (Complainant) brings this Accusation solely in her official capacity
21 as the Assistant Executive Officer of the Board of Registered Nursing, Department of Consumer
22 Affairs.

23 2. On or about March 22, 2006, the Board of Registered Nursing issued Registered
24 Nurse License Number 676264 to Julia Denise McIlrath (Respondent). The Registered Nurse
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on October 31, 2009, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

....

7. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

....

REGULATORY PROVISIONS

8. California Code of Regulations, title 16, section 1443 states:

As used in Section 2761 of the code, "incompetence" means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5.

9. California Code of Regulations, title 16, section 1443.5 states:

A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

(4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.

(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided.

10. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

1 (c) Theft, dishonesty, fraud, or deceit.

2 (d) Any conviction or act subject to an order of registration pursuant to Section
3 290 of the Penal Code.

4 **COST RECOVERY**

5 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
6 administrative law judge to direct a licensee found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case.

9 **DRUG**

10 12. Versed, a brand name for midazolam, is a Schedule IV controlled substance as
11 designated by Health and Safety Code section 11057, subdivision (d)(21), and is a dangerous
12 drug pursuant to Business and Professions Code section 4022.

13 **FACTS**

14 13. At all times referenced herein Respondent was employed as a registered nurse at La
15 Jolla Endoscopy Center (LJEC).

16 14. On or about September 12, 2007, Respondent was assigned to the Admissions/
17 Recovery area at LJEC. At approximately 0930, Respondent assisted another nurse (Lisa), the
18 Director of LJEC, in transferring a patient to Procedure Room 2. (Nurse Lisa was covering for
19 Nurse Rahi's patient while Nurse Rahi was on a break.) While Nurse Lisa was tending to the
20 patient, she observed Respondent retrieve a vial of Versed and a syringe from the medication
21 drawer. Nurse Lisa confronted Respondent and asked her what she was doing. Respondent told
22 Nurse Lisa that she was drawing up the medications. Nurse Lisa told Respondent that she didn't
23 need help in drawing up the medications. Respondent placed the syringe and Versed back in the
24 drawer and left. Nurse Rahi returned to Procedure Room 2 and took over as the patient's nurse.

25 15. Approximately five minutes later, Nurse Rahi opened the door to Procedure Room 2
26 and handed Nurse Lisa a note. The note stated that Respondent entered the room while the
27 procedure was in progress, spoke briefly to Nurse Rahi, opened the medication drawer, and
28 picked up the syringe and vial of Versed. Nurse Rahi observed Respondent draw the medication

1 into the syringe, place the vial of Versed back in the medications drawer, then walk out of the
2 room with the filled syringe in her hand.

3 16. Nurse Lisa immediately went to the Admissions/Recovery area where Respondent
4 was assigned to work, but could not find her. Nurse Lisa spoke to another nurse in Recovery and
5 was told that Respondent had either been off the floor or locked in the bathroom most of the
6 morning.

7 17. When Respondent came out of the locked restroom, Nurse Lisa and Nurse Rahi
8 confronted her privately in the break room. Respondent denied taking the syringe with Versed
9 and stated she went to Procedure Room 2 to help Nurse Rahi with her medications. Nurse Lisa
10 reminded Respondent that it was policy that only the RN's assigned to the procedure are
11 authorized to handle the medications. Nurse Lisa observed that Respondent's pupils were dilated
12 and she displayed a calm and aloof demeanor. Nurse Lisa told Respondent she would not be
13 allowed to work with patients and was relieved of her duties. Respondent left LJEC at
14 approximately 1045. Nurse Lisa reported the incident to both the LJEC clinical and medical
15 directors.

16 18. On or about September 13, 2007, Nurse Lisa spoke to Respondent about the incident
17 on the previous day and told Respondent that her behavior suggested that she was abusing drugs.
18 Respondent denied the allegation, refused to obtain treatment, and refused to submit to a drug
19 screen. Respondent's employment with LJEC was terminated on September 17, 2007. The same
20 day, Nurse Lisa cleaned out Respondent's locker and found a cup with a packet containing eight
21 tablets of Valium 10 mg. A complaint was filed with the Board on or about October 1, 2007.

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Incompetence)**

24 19. Respondent is subject to disciplinary action under section 2761, subdivision (a)(1) of
25 the Code for unprofessional conduct in that on or about September 12, 2007, as described in
26 paragraphs 13-18, above, Respondent demonstrated incompetence when she obtained and
27 administered to herself the controlled substance Versed. Respondent's conduct evidences her
28 present or potential unfitness to practice in a manner consistent with the public health, safety, and

1 welfare and is substantially related to the qualifications, functions or duties of a registered nurse
2 pursuant to California Code of Regulations, title 16, section 1444.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct – Illegally Obtaining a Controlled Substance)**

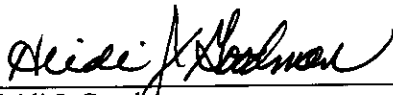
5 20. Respondent is subject to disciplinary action under section 2761, subdivision (a) of the
6 Code for unprofessional conduct, within the meaning of section 2762, subdivision (a), in that on
7 or about September 12, 2007, as described in paragraphs 13-18, above, Respondent illegally
8 obtained the controlled substance Versed without a prescription. Such dishonest and deceitful
9 conduct is substantially related to the qualifications, functions or duties of a registered nurse
10 pursuant to California Code of Regulations, title 16, section 1444, subdivision (c).

11 **PRAYER**

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Board of Registered Nursing issue a decision:

- 14 1. Revoking or suspending Registered Nurse License Number 676264, issued to Julia
15 Denise McIlrath;
16 2. Ordering Julia Denise McIlrath to pay the Board of Registered Nursing the reasonable
17 costs of the investigation and enforcement of this case, pursuant to Business and Professions
18 Code section 125.3; and
19 3. Taking such other and further action as deemed necessary and proper.
20

21 DATED: 7/22/09


22 Heidi J. Goodman
23 Assistant Executive Officer
24 Board of Registered Nursing
25 Department of Consumer Affairs
26 State of California
27 Complainant
28

SD2009804309